

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 20, 2007

**FRAZIA McDONALD, INDIVIDUALLY AND AS  
EXECUTRIX OF THE ESTATE OF FRAZIA LEE McDONALD,  
KATHLEEN WALLACE, AND JOHN McDONALD**

**v.**

**TRAVIS CALHOUN, M.D., AND  
JENNIE STUART MEDICAL CENTER, INC.**

**An Appeal from the Circuit Court for Davidson County  
No. 06C-1006     Hamilton V. Gayden, Jr., Judge**

**No. M2007-00179-COA-R3-CV - Filed December 19, 2007**

This appeal involves *in personam* jurisdiction over out-of-state defendants. The plaintiffs' decedent was a resident of Kentucky. She was admitted to a Kentucky hospital for a blood clot in her leg. Her treating physician was a Kentucky resident. The next day, the decedent fell in her hospital bathroom and hit her head, causing bleeding in her brain. Soon thereafter, the decedent was flown to a nearby hospital in Tennessee, where she soon died from excessive bleeding in her brain. The decedent's three children brought this action in Tennessee against the Kentucky hospital and the Kentucky treating physician for wrongful death due to medical malpractice. The defendants moved to dismiss based on, among other things, lack of *in personam* jurisdiction. The trial court granted the defendants' motions, finding that the plaintiffs had not established sufficient contacts so as to justify exercising personal jurisdiction over the defendants in Tennessee. The plaintiffs now appeal. We affirm, concluding that the plaintiffs failed to establish a *prima facie* case of *in personam* jurisdiction over the defendants.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Geoffrey Coston, Franklin, Tennessee, for the appellant, Frazia McDonald, individually and as Executrix of the Estate of Frazia Lee McDonald, Kathleen Wallace, and John McDonald.

Michael F. Jameson and Renee Levay Stewart, Nashville, Tennessee, for the appellee, Travis Calhoun, M.D.

William S. Walton and Jeffrey Zager, Nashville, Tennessee, for the appellee Jennie Stuart Medical Center, Inc.

## MEMORANDUM OPINION<sup>1</sup>

This appeal in this wrongful death action turns on the issue of personal jurisdiction. Frazia Lee McDonald (“Decedent”), lived in Hopkinsville, Kentucky.<sup>2</sup> On April 17, 2005, she was admitted to Defendant/Appellee Jennie Stuart Medical Center, Inc. (“Jennie Stuart Hospital” or “the Hospital”), also in Hopkinsville, Kentucky, for treatment of a blood clot behind the knee area. The Decedent’s treating physician was Defendant/Appellee Travis Calhoun, M.D. (“Dr. Calhoun”), also a Kentucky resident. After admission, the Decedent was prescribed pain medication and blood thinners. During her first night after being admitted, she became confused and paranoid. Although the Decedent’s fall assessment indicated that her bed alarm should be activated, this was not done.<sup>3</sup>

On the night of April 18, 2005, the Decedent fell in the hospital room bathroom and hit her head and her hip. She suffered an unusually large hematoma from her hip to her knee area and was also found to have a small subdural (brain) hematoma. The bleeding from the subdural hematoma was exacerbated by the blood thinning medicines that had been prescribed to the Decedent. In an apparent “last ditch” effort to save the Decedent’s life, on April 23, 2005, the Decedent was “life flighted” sixteen miles away to Vanderbilt Medical Center (“Vanderbilt Hospital”) in Nashville, Tennessee, in order for Vanderbilt physicians to evacuate the subdural hematoma. However, before this could be done, in the early morning on April 24, 2005, the Decedent died at Vanderbilt Hospital from the bleeding of the subdural hematoma. The complaint alleges that the Decedent’s bleeding was so extensive that no surgery could have saved her. It further asserts that, had the Vanderbilt staff known this fact prior to the Decedent’s admission, Vanderbilt Hospital would not have accepted the transfer, because this type of bleeding in the brain is invariably fatal.

On April 24, 2006, the Decedent’s three children, Frazia McDonald (individually and as executrix of the estate of the Decedent), Kathleen Wallace, and John McDonald (collectively, “Plaintiffs”), filed the instant lawsuit in the trial court below against Dr. Calhoun and the Jennie Stuart Hospital (collectively, “Defendants”) for the wrongful death of the Decedent. The complaint alleged medical malpractice, asserting that the Decedent’s death was caused by the Defendants’ negligent conduct. On July 28, 2006, Jennie Stuart Hospital entered a special appearance and filed a motion to dismiss the complaint pursuant to Rule 12.02 of the Tennessee Rules of Civil procedure

---

### <sup>1</sup>Rule 10. MEMORANDUM OPINION

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

<sup>2</sup>Because this case was dismissed on the face of the complaint, the facts as stated in the complaint are taken as true for purposes of this appeal. *See Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.*, 986 S.W.2d 550, 554 (Tenn. 1999)

<sup>3</sup>The complaint asserts that the standard of care and hospital policy required the bed alarm to be activated when the patient’s fall assessment is greater than 25, and that the Decedent’s fall assessment was 70.

based on lack of personal jurisdiction, lack of venue, insufficiency of service of process, and failure to state a claim on which relief could be granted. The Hospital claimed, among other things, that the case should be dismissed for lack of personal jurisdiction and lack of venue, because the Jennie Stuart Hospital is located in Kentucky, and because the Hospital had no offices, clinics, or agent for service of process in Tennessee. Furthermore, it argued, all of the negligent acts alleged in the complaint occurred in Kentucky. In addition, the Hospital contended that the case should be dismissed based on the doctrine of *forum non conveniens*. The Hospital's motion to dismiss was supported by the affidavit of a Hospital employee.

The Plaintiffs filed a response to the Hospital's motion, attaching their affidavits and other proof related to the Hospital's location. They argued that personal jurisdiction over the Hospital was proper under Tennessee's long-arm statute, Tennessee Code Annotated § 20-2-214(a). They contended that, under the statute, jurisdiction is proper in cases where an out-of-state act results in damages in Tennessee. In this case, they argued, specific jurisdiction existed because the Hospital purposely sent the Decedent to Tennessee and caused a foreseeable injury there. In addition, the Plaintiffs argued that general jurisdiction over the Hospital existed, because Jennie Stuart Hospital is located only sixteen miles outside of Tennessee, and it regularly markets its services to residents of Tennessee. Therefore, the Plaintiffs claimed, the Hospital had "continuous and systematic" contacts with Tennessee sufficient to establish general jurisdiction in this State. The Plaintiffs maintained that the issue of general jurisdiction is at least a fact question to be decided after further discovery.

On September 29, 2006, the trial court heard oral argument on the Hospital's motion. On October 9, 2006, an order was entered granting the Hospital's motion to dismiss. In the order, the trial court observed that all of the parties to the action are in Kentucky, the deceased was a resident of Kentucky, and the alleged negligent acts giving rise to the lawsuit occurred in Kentucky. The trial court also noted that Kentucky law would apply to many of the issues, and that most, if not all, of the witnesses and events concerning the alleged medical negligence are located in Kentucky. Therefore, it granted the Hospital's motion to dismiss based on lack of personal jurisdiction and improper venue. The trial court further concluded that, even if personal jurisdiction and venue were proper in Tennessee, the facts would lead it to dismiss the case based on the doctrine of *forum non conveniens*. Because it had concluded that the case should be dismissed on these grounds, the trial court overruled the Hospital's motion as it related to insufficiency of service of process and failure to state a claim upon which relief could be granted.

On October 13, 2006, Dr. Calhoun filed a motion to dismiss based on the same grounds as the Hospital, attaching his own affidavit in support of the motion.<sup>4</sup> The Plaintiffs did not file a response to Dr. Calhoun's motion. On October 27, 2006, the trial court held a hearing on Dr. Calhoun's motion to dismiss, and on November 7, 2006, the trial court entered an order granting it, again based on lack of personal jurisdiction and improper venue. The order noted that there was no opposition to Dr. Calhoun's motion.

---

<sup>4</sup>Dr. Calhoun did not allege insufficient service of process.

On November 17, 2006, the Plaintiffs filed a motion to reconsider the Defendants' motions to dismiss, attaching affidavits and other evidence. In an affidavit, Plaintiffs' counsel explained that, although he was aware the lawsuit should be filed in Kentucky, it was filed in Tennessee because of the difficulty of obtaining counsel in Kentucky. He also stated that no response was filed to Dr. Calhoun's motion to dismiss because it was incorrectly placed on the calendar in his office. The other evidence submitted by the Plaintiffs consisted of proof that the Hospital had filed several collections cases in Tennessee, six years or more before the alleged malpractice. The Plaintiffs claimed that the collection cases were evidence of the Hospital's contacts with Tennessee. On December 1, 2006, the trial court conducted a hearing on Plaintiffs' motion to reconsider, and on December 14, 2006, the trial court entered an order concluding again that dismissal of the complaint was appropriate. From this order, the Plaintiffs now appeal.

On appeal, Plaintiffs argue that the trial court erred in dismissing the case for lack of *in personam* jurisdiction and improper venue.<sup>5</sup> We review a trial court's dismissal for lack of personal jurisdiction or for improper venue *de novo*, with no presumption of correctness. *See Lanius v. Nashville Elec. Serv.*, 181 S.W.3d 661, 663 (Tenn. 2005) (venue); *Noles v. Mich. Powersports, Inc.*, No. M2005-00420-COA-R9-CV, 2005 WL 2989614, at \*2 (Tenn. Ct. App. Nov. 7, 2005) (personal jurisdiction). In reviewing the trial court's decision to dismiss the case at this stage of the litigation, we must take the Plaintiffs' allegations of fact as true, viewing them in the light most favorable to the Plaintiffs. *Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.*, 986 S.W.2d 550, 554 (Tenn. 1999); *Mfrs. Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 854 (Tenn. Ct. App. 2000). The Plaintiffs bear the burden of establishing their *prima facie* case that personal jurisdiction exists and venue is proper. *Noles*, 2005 WL 2989614, at \*2.

Under Tennessee's long-arm statute, Tennessee courts may exercise jurisdiction to the extent permitted by the Fourteenth Amendment to the United States Constitution.<sup>6</sup> *Chenault v. Walker*,

---

<sup>5</sup>The Plaintiffs also challenged the trial court's alternative ruling on the doctrine of *forum non conveniens*. In light of our decision herein, we need not address this issue.

<sup>6</sup>Tennessee's long-arm statute provides:

(a) Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:

- (1) The transaction of any business within the state;
- (2) Any tortious act or omission within this state;
- (3) The ownership or possession of any interest in property located within this state;
- (4) Entering into any contract of insurance, indemnity, or guaranty covering any person, property, or risk located within this state at the time of contracting;
- (5) Entering into a contract for services to be rendered or for materials to be furnished in this state;

(continued...)

36 S.W.3d 45, 52-53 (Tenn. 2001). To establish “long arm” jurisdiction over a non-resident defendant, a plaintiff must show “minimum contacts” sufficient to justify exercising personal jurisdiction such that “the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Gregurek v. Swope Motors, Inc.*, 138 S.W.3d 882, 884 (Tenn. Ct. App. 2003) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)); *United Agric. Servs. v. Scherer*, 17 S.W.3d 252, 256 (Tenn. Ct. App. 1999). In evaluating the contacts between a defendant and the forum state, Tennessee courts consider five factors: (1) the quantity of the contacts between the defendant and the forum state; (2) the nature and quality of those contacts; (3) the relationship between those contacts and the cause of action; (4) the interest of the forum in adjudicating the dispute; and (5) the convenience of the forum state to the parties. *Masada Inv. Corp. v. Allen*, 697 S.W.2d 332, 334 (Tenn. 1985). To determine that personal jurisdiction exists, the weight of the factors should show that the defendant, through its conduct or connection to the forum state, could “reasonably anticipate being haled into court.” *Id.*; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

There are two types of personal jurisdiction over a defendant, general jurisdiction and specific jurisdiction. General *in personam* jurisdiction exists when the plaintiff can show that the defendant maintains “continuous and systematic” contacts with the foreign state. *Int’l Shoe Co.*, 326 U.S. at 317; *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9 (1984). This type of jurisdiction is exercised when the litigation does not arise out of the defendant’s contacts with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 & n.15 (1985). In contrast, specific jurisdiction exists if the defendant purposely directs his activities toward citizens of the forum state, and the litigation results from injuries arising out of or relating to those activities. *Id.*; *see Shoney’s, Inc. v. Chic Can Enters.*, 922 S.W.2d 530, 537 (Tenn. Ct. App. 1995). In this appeal, the Plaintiffs argue that both general and specific jurisdiction exists over the Defendants in Tennessee.

We first address the issue of general jurisdiction. The Plaintiffs argue that general jurisdiction over the Defendants exists in this case because the Defendants’ contacts with Tennessee are “continuous and systematic.” They note that the Jennie Stuart Hospital is only sixteen miles from the Kentucky/Tennessee border and assert that the Hospital actively markets its services to residents of Tennessee. The Plaintiffs point to the Hospital’s website, which states that it serves “western Kentucky and northern Tennessee,” and gives directions to the Hospital from Tennessee. In addition, the Plaintiffs argue, Jennie Stuart Hospital has availed itself of the use of Tennessee state courts by filing lawsuits in Tennessee to collect money owed to the Hospital. The Plaintiffs also

---

<sup>6</sup>(...continued)

(6) Any basis not inconsistent with the constitution of this state or of the United States;

(7) Any action of divorce, annulment or separate maintenance where the parties lived in the marital relationship within this state, notwithstanding one party's subsequent departure from this state, as to all obligations arising for alimony, custody, child support, or marital dissolution agreement, if the other party to the marital relationship continues to reside in this state.

T.C.A. § 20-2-214(a) (1994).

claim that, even if these facts alone do not establish general *in personam* jurisdiction, the trial court acted prematurely in dismissing the case because the resolution of the jurisdictional issue is “a fact gathering exercise,” and they should be given the opportunity to conduct discovery to find further evidence of contacts between the Defendants and Tennessee.

Viewing the facts in the light most favorable to the Plaintiffs, we must conclude that the contacts cited by the Plaintiffs do not show “continuous and systematic” contacts sufficient to establish general personal jurisdiction over the Defendants in Tennessee. **Gregurek**, 138 S.W.3d at 885 (finding lack of general jurisdiction over Kentucky resident when defendant’s only contact with Tennessee were seventeen customers with Tennessee addresses). The fact that the Hospital maintains a website that solicits business from Tennessee residents is not sufficient to establish general jurisdiction. **See Bird v. Parsons**, 289 F.3d 865, 874 (6<sup>th</sup> Cir. 2006) (“[T]he fact that [the defendant] maintains a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction.”). While the Plaintiffs cite collections lawsuits filed by the Hospital in Tennessee, they identified only six, the most recent in 1999. Suing a few Tennessee residents in their own state is not evidence that the Hospital intended to establish a “continuous and systematic” presence in Tennessee. While the Plaintiffs claim that the trial court’s decision was premature, the Plaintiffs had the opportunity to request discovery to support their claim of “continuous and systematic” contacts between the Defendants and the State of Tennessee, but did not do so. Overall, we must find that the Plaintiffs have not carried their burden of establishing general *in personam* jurisdiction over the Defendants in Tennessee.

The Plaintiffs also argue that specific *in personam* jurisdiction exists over the Defendants, based on the conduct that gave rise to this lawsuit. In order to find specific *in personam* jurisdiction, the court must find that the defendant had “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.” **Burger King Corp.**, 471 U.S. at 472 (quoting **Shaffer v. Heitner**, 433 U.S. 186, 218 (1997) (Stevens, J., concurring in judgment)). The “fair warning” requirement is satisfied if the defendant has “purposely directed” his activities at residents of the forum state, and the litigation results from alleged injuries that “arise out of or relate to” those activities. **Id.** (citing **Helicopteros**, 466 U.S. at 414 (1984)); **Keeton v. Hustler Magazine, Inc.**, 465 U.S. 770, 774 (1984).

The Plaintiffs argue that specific *in personam* jurisdiction over the Defendants is established by the fact that they purposely transferred the Decedent from Kentucky to Tennessee, where she died. Because the Defendants’ actions in Kentucky caused injury in Tennessee, the Plaintiffs claim, exercising jurisdiction over the Defendants in Tennessee is proper. In support of this argument, the Plaintiffs cite **Jasper Aviation, Inc. v. McCollum Aviation, Inc.**, 497 S.W.2d 240 (Tenn. 1972). In **Jasper**, a Tennessee corporation bought an airplane from an out-of-state seller based on misrepresentations in the seller’s advertisements. The Tennessee corporation filed a lawsuit in Tennessee against the out-of-state seller and the out-of-state advertiser, alleging misrepresentation. The out-of-state seller filed a motion to dismiss, arguing that the trial court did not have personal jurisdiction over them because they had never conducted any business in Tennessee. Their only contact with Tennessee, they claimed, was their placement of an ad in a trade magazine which happened to be published in Tennessee. The appellate court disagreed, holding that “even if all the tortious acts in a case were committed outside the State of Tennessee, . . . but the resulting tortious

injury was sustained within the State, then the tortious acts and the injury are inseparable and jurisdiction lies in Tennessee.” *Id.* at 244.

Plaintiffs argue that the facts in the instant case are analogous to those in *Jasper* because, although the Defendants’ negligent activities occurred in Kentucky, the resulting injury, the Decedent’s death, occurred in Tennessee, and “the tortious acts and the injury are inseparable.” *See id.* Indeed, they imply that the facts in this case more strongly support a finding of personal jurisdiction, because the defendants in *Jasper* had no control over where the aircraft was flown after it was purchased, whereas the Defendants in this case purposely sent the Decedent to Vanderbilt in Tennessee. Therefore, the Plaintiffs argue, because the Defendants’ tortious acts in Kentucky resulted in injury in Tennessee, and because this lawsuit is based on that resulting injury in Tennessee, the Tennessee courts may exercise specific *in personam* jurisdiction over the Defendants in Tennessee. *See Chenault*, 36 S.W.3d at 51 (citing *Jasper*, 497 S.W.2d at 244).

In response, the Defendants distinguish *Jasper* from the instant case, because *Jasper* involved a *Tennessee* resident as a plaintiff and because the defendant’s fraudulent conduct was directed purposely at Tennessee residents. The Defendants argue that this case is more analogous to *Hinkley v. Tummel & Carroll*, No. 01-A-01-9504-CV-00174, 1995 WL 700200 (Tenn. Ct. App. Nov. 29, 1995). In *Hinkley*, the plaintiff, a resident of Texas, sued a Texas law firm in Tennessee. The plaintiff asserted legal malpractice against the Texas firm for failing to timely file a claim against the state of Tennessee for injuries that occurred in Tennessee. The defendant Texas lawyers had contacted various Tennessee state officials about filing the underlying lawsuit in Tennessee, but failed to do so within the applicable statute of limitations. The trial court dismissed the plaintiff’s lawsuit for lack of personal jurisdiction. *Id.* at \*3. The appellate court affirmed the dismissal, reasoning that all of the defendant’s activities involved dealings in Texas with a Texas resident, and that telephone calls or mailings directed to a Tennessee resident were insufficient to confer jurisdiction upon a Tennessee court. *Id.* The Defendants in this case argue that the facts here are similar to those in *Hinkley*, because this case involves Kentucky residents filing suit against Kentucky defendants for activities that occurred in Kentucky. Therefore, they contend, asserting specific personal jurisdiction over these Defendants would be improper.

We must conclude that the Plaintiffs have not shown that the Defendants have a sufficient connection with Tennessee so as to establish specific *in personam* jurisdiction over them in Tennessee. In this case, the Decedent was a Kentucky resident. All of the Defendants’ allegedly negligent activities occurred in Tennessee. The Plaintiffs assert in their complaint that the Decedent’s bleeding in the brain was fatal before she was transferred from Jennie Stuart Hospital to Vanderbilt. Therefore, by the Plaintiffs’ own allegations, the injury in effect occurred in Kentucky. The only connection with Tennessee is that the Decedent’s death, the inevitable result of her injuries, occurred shortly after the Defendants had the Decedent life-flighted to Tennessee. This is unlike the situation in which an out-of-state defendant solicits business from Tennessee residents, places a product in the stream of commerce in Tennessee, or advertises its products to Tennessee residents and later causes injury to a Tennessee resident. *See, e.g., McCombs v. Cerco Rentals*, 622 S.W.2d 822, 825-26 (Tenn. Ct. App. 1981); *Jasper*, 497 S.W.2d at 244. Under all of these circumstances, we find that the trial court correctly found that it lacked specific *in personam* jurisdiction over these Defendants.

Therefore, even viewing the facts in the light most favorable to the Plaintiffs, exercising personal jurisdiction over these Defendants would be improper. We affirm the trial court's dismissal of the complaint for lack of personal jurisdiction. This holding pretermits any other issues raised in this appeal.

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellants Frazia McDonald, Individually and as Executrix of the Estate of Frazia Lee McDonald, Kathleen Wallace, and John McDonald, and their surety, for which execution may issue, if necessary.

---

HOLLY M. KIRBY, JUDGE